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ABSTRACT

Documents included in the packet are Federal Communications Commission (FCC) releases dealing with cable television and similar notices from other organizations. Among these are an interpretation of the FCC local origination decision of Dec. 9, 1974, explaining the repeal of the requirement that small cable systems originate programing while continuing to require that equipment be kept available for non-operator produced programing; a discussion of an FCC proceeding to establish federal and local jurisdiction over cable TV; a discussion of federal preemption of technical standards; and a position paper discussing whether cable operators or independent dealers should repair cable sets, with comments from the National Electronic Dealers Association. (SK)

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CABLE TELEVISION INFORMATION CENTER

January 1975

INFORMATION PACKET.

FCC LOCAL ORIGINATION DECISION

On December 9, 1974, the FCC released its decision in the local origination rulemaking proceeding (Docket No. 19988). It repealed the requirement that cable systems with 3,500 subscribers originate programming, but stipulated such systems have equipment available and permit the presentation of non-operator produced programming.

The commission has not abandoned its goal of affording outlets for local expression to as many communities as possible. But it has determined that "quality, effective, local programming demands creativity and interest (which) cannot be mandated by law or contract." ¶ 33.

The new ruling affects "all systems serving 3,500 or more subscribers and all conglomerates of commonly owned and technically integrated systems serving 3,500 or more subscribers." ¶ 35. The term "technical integration" is "limited to that accomplished by a local cable or microwave (e.g. a CARS LDS facility) interconnection." (Footnote 11.) The FCC has determined that relatively large systems, those serving 3,500 or more subscribers, can meet the equipment requirement without a threat to their economic viability. The rule thus applies both within and outside the top 100 markets. (This contrasts with the access channel requirement, which affects top 100 market systems of whatever size.)

The equipment availability requirement is a minimal obligation. The operator must have "at least the capacity of afford live programming with one or more black and white cameras, the capacity to video tape record remote programs, edit, and play them back, and the capacity to modulate the resulting video and audio product on a cable channel." ¶ 39. The commission's example of the "very basic minimum" is "a ½-inch portable video tape recorder with a camera and appropriate adaptors to connect to an editing/playback video tape deck and to a modulator." (Footnote 12.) It is asserted that compliance can be achieved at a capital cost of less than $10,000, with annual equipment maintenance costs of less than $1,000. The FCC states that a system which is providing public access cablecasting or is now originating is deemed to have the appropriate equipment on hand and is therefore already in compliance.

In some instances, the operator may find it relatively easy to comply with the equipment availability requirement, but may have no outlet for the programming. For example, a 3,500 subscriber system located outside a top 100 market, which therefore need not provide access channels and for which the mandatory origination requirement had been waived, may have no origination channel and no access channels. The commission recognizes the difficulty and charges the operator to "act in good faith and make every reasonable effort to insure that video access is available to those who seek it." ¶ 40. Unused channels, of course, would be available for the presentation of such programming, as would portions of an origination channel. Also, the FCC suggests that automated channels and "black-out" time on channels used for broadcast signals could be utilized.

The new rules require the operator to establish operating rules providing for "first-come, non-discriminatory availability of equipment and bandwidth"; prohibiting lottery information and obscene an- indecent matter; requiring sponsorship identification; specifying a schedule of rates; and permitting public inspection of the records of all persons requesting equipment or bandwidth (which records must be kept for two years). Charges for equipment must be "consistent with the goal of affording the public a low cost means of television access." Operators may also lease the equipment to commercial users so long as it does not impede the availability of equipment for noncommercial local expression.

The commission also repealed its rule that advertising on operator-originated programming be at natural breaks, but it left intact the fairness doctrine, equal time and other obligations regarding content that are currently applicable to such programming.

The new rules become effective January 1, 1976. However, if a system complies with the equipment availability rule earlier than that, it must then comply with the rest of the regulations regarding operating rules, assessment of cost and the like.

The full impact of this rule change on franchise authorities is unclear. It is certain that, while the FCC considers it unwise, local franchising officials may require origination. This is a marked departure from current policy under which locally imposed origination requirements had purportedly been preempted. The commission does not depart from the view that the decision to originate ought to be the operator's alone, but it is now no longer prohibiting franchising authorities from requiring the operator to originate. Beyond that, it is clear what the FCC will permit local authorities to do. It states that "local authorities may require an origination channel but may not mandate the manner of operation of that channel." ¶ 45. It is unknown whether that means that a franchise will not receive a certificate of compliance if it specifies that a broadcast quality studio must be used for operator-originated programming, or if it specifies a minimum annual budget for such programming.

December 12, 1974

RULEMAKING BEGUN ON ALLOCATION OF
REGULATORY JURISDICTION OVER CABLE TELEVISION

(RELEASED BY FCC AFTER CENTER COVER LETTER WAS PRINTED)

The commission announced on December 12 that is has commenced a rulemaking proceeding inquiring into the allocation of regulatory authority and the desirability of nonduplicative regulation of cable television. The action was taken in response to the September, 1973 final report of the Federal-State/Local Advisory Committee (FSLAC), which had studied the subject for over a year.

The action seeks to determine what, if any, federal regulations might be necessary to assure clear and nonduplicative state or local regulation, and to avoid excessive state or local controls.

The FCC expresses concern about the emergence of state regulation. It apparently associates this third regulatory tier with duplicative regulation and delay. It expresses even greater concern with the occasional situation in which there appears to be no local body having authority to franchise and regulate a cable system.

The commission views duplicative regulation as frustrating the accomplishment of federal goals and possibly obstructing interstate commerce, and wishes to consider means to prevent such obstruction without intruding upon the rightful prerogatives of states.

The FCC stressed the need for some action, be it voluntary or involuntary. It indicated that if Congressional action were necessary, appropriate legislation would be proposed immediately, but that if it considered its existing powers sufficient it would act quickly.

Comments in this proceeding (Docket No. 20272) are due February 17, 1975, and replies are due March 17, 1975.

At the time of this mailing, only a press release, and not the full Notice, had been issued by the commission. Franchise authorities wishing further information should contact their center regional director.

FEDERAL PREEMPTION OF TECHNICAL STANDARDS

In a decision concluding its cable television technical standards rulemaking proceeding (Docket No. 20018), the Federal Communications Commission announced on October 31, 1974 that it would preempt the area of technical standards for cable systems. The effect of this action is that local governments are precluded from adopting technical standards for systems that exceed the commission's standards, or standards that would operate where the FCC has imposed none. The commission expects to promote national uniformity in technical standards, but will allow some local deviations pursuant to waivers granted by the FCC.

The scope of the preemption deals specifically with the type of technical performance standards specified in Part 76, Subpart K of the FCC's Cable Television Rules. It is expressly limited to

> ... standards that are quantitative definitions of the electrical or optical characteristics of a signal source, transmission system, or termination device. Such standards speak only to the shaping, amplification, attenuation, purity, etc., of the signals carried on cable systems.

The preemption expressly excludes

> ... mechanical or equipment standards designed to protect, for example, against extraordinarily corrosive environments, daily or seasonal temperature extremes, high winds, or rodent attack. Nor are we here directly concerned with the channel capacity of a system, protection against electrical supply outages, the placement of structures, construction practices, or electrical safety code enforcement. ¶ 4.

The commission recognized that some benefits may be derived from standards tailored to particular local needs or designed to encourage experimentation, and thus determined to provide flexibility in the form of waiver relief. The decision allows for waivers in those cases where: 1) The commission has set no standard and "there is a demonstrated state or local need for such a standard;" or 2) The FCC's standard is "demonstrably inadequate to meet state or local needs or conditions." Local variations which "can be supported both from a technical and socio-economic standpoint" and are accompanied by a showing of local enforcement capability will be granted waivers on an interim basis until "subsequently adopted federal standards remove the need for the state or local variation."

Thus, a waiver must be supported by three showings: 1) Local need; 2) The reasonableness of the standards, from technical and cost-benefit viewpoints; and 3) Enforcement capability. Different standards will be subject to rigorous review to assure that they do not interfere with the commission's goals of uniformity and interconnectability. The impropriety of local standards for digital signals was emphasized.

Nonfederal standards applicable to systems which are either operational or have a certificate of compliance by January 1, 1975 will be grandfathered, while all other systems must obtain specific waivers for different or additional standards. Operators of grandfathered systems may seek special relief from nonfederal standards if such criteria can be shown to be inconsistent with the goals of uniformity and interconnectability.

Because the commission's action has preempted only standards for signal characteristics, the decision's effect on the Cable Television Information Center's standards is to preempt only Subsections B and C of Technical Standards and Specifications: How To Plan An Ordinance Supplement VII. Those subsections deal with signal reception standards and subscriber viewing standards. Of course, the standards that appear in those subsections may be imposed locally if the FCC sanctions them via the waiver process. The center's standards are generally regarded as being reasonable, and thus may well receive waivers. However, the local government wishing to impose them must demonstrate some local need to justify the waiver. Local officials should also bear in mind that adoption of any standard that is div ent from the commission's always entails some delay since applications for waivers take more time to process than do applications that are entirely consistent with the rules.

It is also conceivable that if the center's standards receive the commission's imprimatur as a result of one waiver grant, they will be perfunctorily approved thereafter. However, this is only speculation at this early juncture, and local governments having an interest in imposing the center's standards or other standards that differ from the FCC's should initiate correspondence with their center regional director to stay apprised of developments.

CENTER ORDINANCE PROVISION

In August of this year, the Cable Television Information Center mailed to all Publications Service subscribers a set of supplements and new materials. Included among these materials was a supplement to Section X(B) of our report, "How to Plan an Ordinance." This section reads as follows:

> B. Repairs of Television Sets by the Cable Operator
>
> Many local ordinances prohibit the sale, lease, rental or repair of television sets by the cable operator. However, some cable operators would like to perform repairs because many service calls involve problems which are not related to cable service, but to the subscriber's TV receiver. Local officials might thus consider exempting repairs from such a general prohibition.

As the enclosed criticism from Mr. Richard Glass of the National Electronic Service Dealers Association indicates, the association has objected strenuously to this section and has interpreted it as a positive recommendation that local governments allow cable operators to repair television sets.

We disagree with this interpretation. Our supplement was intended as an alternative, not a positive recommendation. Moreover, we find the apocalyptic tone of the NESDA's logic to be simplistic and overstated. The merest appearance of alternative points of view is met with verbal bludgeoning and vast exaggeration intended to obscure rather than clarify public issues. However, we do wish to make sure that cable franchising authorities understand the issue, and the Cable Television Information Center's point of view.

The issue arises because maintenance problems occur, at times, with both home television sets and with cable television connections to home television sets. When such problems occur it is sometimes difficult to determine whether the set or the cable television connection is at fault. Under such circumstances the consumer may get caught in a maintenance "tug-of-war" between the cable system and the television set repair people, with each blaming the other for any problems that have occurred. It is clearly predictable that local authorities

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will have to deal with consumer complaints that emerge from such disagreements.

Since the basic issue in this matter is one which can cause considerable annoyance to consumers, it must be addressed by local government. Our Section X(B) was an effort to define one alternative by which a franchise authority could deal with this problem: it was not to recommend this or any other alternative. Whether that alternative or some other should be adopted, is obviously a matter for local government decision, after consideration of the pros and cons. And that is how it should be.

NESDA LETTER

October 1, 1974

"Owe Your Soul to the Company Store"

Did you think those days were long ago? Those days of slavery; share-cropping; and one-company towns where most of the residents "Owed Their Souls to the Company Store"? Maybe not.

Most of us are too young to have experienced that nightmare. As Americans we pride ourselves in the fact that business in this country has prospered under the free enterprise, competitive, system. In fact, most businessmen base their entire political philosophy on the free enterprise, competitive, method of conducting business. That system has brought the people the widest variety of the highest quality goods and services, at the lowest price.

Electronic sales and service businesses are as pure an example of free enterprise as you will find: No government subsidies; no "corner on the market"; no getting paid for NOT working, or for NOT planting; no funding by the Ford or Markle foundations, just hard and extremely complex work. Some of the rugged individualists make it and are repaid for their capitol risks and technical expertise. Some fail. Servicing TV sets and other electronics products is a difficult job technically and is further complicated by the hundreds of brands and models; the proliferation of parts needed for repair; inadequate service data; and manufacturers' warranty programs which have no real expectations of paying the real costs of performing the guarantee.

What has this to do with "Owing Your Soul to the Company Store"? Plenty! The Cable Television Information Center, in August, overstepped its authority and committed a serious breach of faith with its subscribers and funders when it "suggested" in that August 12th Publications Service:

> "Many local ordinances prohibit the sale, lease, rental or REPAIR* of television sets by cable operators. However, some cable operators would like to perform repairs because many service calls involve problems which are not related to cable service , but to the subscriber's TV receiver. *LOCAL OFFICIALS MIGHT THEN CONSIDER EXEMPTING REPAIRS FROM SUCH A GENERAL PROHIBITION."

While you suggest exempting REPAIRS, and it may seem logical to some, it is only a first step towards exempting sales and leasing, also. Why not? And it is also a suggestion by the CATV Information Center that reaches further than the original goal of "Providing local and state governments with analytical tools required to make franchising decisions IN THE PUBLIC INTEREST."!

If CATV systems are permitted to sell and service they will eventually "take over" the electronics sales and service business. That will cost the public one of the few remaining competitive services left. A service that has been a large factor in giving them a relatively low priced, yet extremely valuable and enjoyable modern day miracle: television.

(* writer's emphasis)

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CATV Systems are monopolies - no ifs, ands, or buts: They ARE monopolies. Because of their nature economically, they are ordinarily granted exclusive and non-competitive franchise territories. To permit their peculiar relationship (their foot in the door) (sanctioned by the local government) with the set owner to include sales or service, is to give them a competitive advantage that will kill most electronic serivce businesses and force most technicians and dealers back to that old system: "Working for the faceless CATV . . . . Company Store."

Our association of electronics sales and service dealers asks you, the CATV Information Center, to retract the suggestion.

Dick Glass
Executive Vice President
National Electronic Service Dealers Association,Inc.
1715 Expo Lane
Indianapolis, Ind 46224